



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[Docket DARS-2015-0053]

RIN 0750-AI77

Defense Federal Acquisition Regulation Supplement: Buy American and Balance of Payments Program—Clause Prescription (DFARS Case 2015-D037)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify how the clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2015-D037, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS

Case 2015-D037" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D037." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D037" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2015-D037 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Tresa Sullivan, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Tresa Sullivan, telephone 571-372-6089.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to clarify when it is appropriate to not include DFARS clause 252.225-7001, Buy

American and Balance of Payments Program, with regard to exceptions to the Buy American statute and Balance of Payment Program. The prescription for use of DFARS clause 252.225-7001 does not clearly make a distinction with regard to when an exception to the Buy American statute or Balance of Payments Program applies. As written, procurement offices may inaccurately believe that it is permissible to omit the clause if either situation occurs. However, the clause is required in solicitations and contracts unless (1) the acquisition is for supplies for use within the United States and an exception to the Buy American statute applies (e.g., nonavailability or public interest), or (2) the acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory

action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it applies to internal procedures for Government contracting officers. This proposed rule clarifies how clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The objective of this proposed rule is to clarify the prescription for use of DFARS clause 252.225-7001, Buy American and Balance of Payments Program, to state that the clause does not apply when (1) the acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, or (2) the acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies.

DoD does not expect this proposed rule to have a significant impact on small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, et seq., because it merely clarifies how the clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies.

This proposed rule does not add any new reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternatives to the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2015-D037), in correspondence.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0229, entitled

Defense Federal Acquisition Regulation Supplement Part 225,
Foreign Acquisition and related clauses.

List of Subjects in 48 CFR Part 225

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is proposed to be amended as
follows:

PART 225—FOREIGN ACQUISITION

1. The authority citation for part 225 continues to read as
follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

225.1100 [Amended]

2. Remove "Subparts" in two places and add "subparts" in their
place.

3. Amend section 225.1101 by—

- a. Revising paragraph (2)(i)(C);
- b. Redesignating paragraphs (2)(i)(D) and (E) as paragraphs
(2)(i)(E) and (F); and
- c. Adding a new paragraph (2)(i)(D).

The revision and addition read as follows:

225.1101 Acquisition of supplies.

* * * * *

(2) (i) * * *

(C) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies, e.g., nonavailability or public interest (see FAR 25.103 and 225.103); or

(D) The acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies (see 225.7501);

* * * * *

[FR Doc. 2015-29558 Filed: 11/19/2015 8:45 am; Publication Date: 11/20/2015]